

ATTENTION: MR ROBERT LAKE
DIRECTOR, OFFICE OF REGULATIONS AND POLICY
CENTRE FOR FOOD SAFETY AND APPLIED NUTRITION
DOCKETS MANAGEMENT BRANCH
FOOD AND DRUG ADMINISTRATION
5630 FISHERS LANE, ROOM 1061
ROCKVILLE, MD USA 20852

FROM: CLASSIC SEAFOOD
FERGUSON'S LOBSTER POUND CO
ISLAND MARINE PRODUCTS
RYER AND RYER LOBSTER

DATE SUBMITTED: APRIL 4, 2003

THE UNDERSIGNED ARE FOUR CANADIAN COMPANIES REGISTERED IN NOVA SCOTIA WHICH EXPORT LIVE LOBSTER AND OTHER SEAFOOD PRODUCTS INTO THE UNITED STATES OF AMERICA. THE UNDERSIGNED COMPANIES ALSO SHIP LIVE LOBSTER AND OTHER SEAFOOD PRODUCTS "IN BOND" WITHIN THE UNITED STATES DESIGNATED FOR RESHIPMENT OUT OF THE UNITED STATES FROM MAJOR AMERICAN AIRPORTS. WE RELY UPON COMMERCIAL AIRLINES, COMMERCIAL COURIER COMPANIES, COMMON CARRIERS AND OUR OWN TRUCKS TO TRANSPORT THESE PRODUCTS INTO THE UNITED STATES. AS SUCH WE ARE AWARE OF THE PROPOSED NEW REGULATIONS DESIGNED TO ACHIEVE COMPLIANCE UNDER **THE BIOTERRORISM ACT**.

WE FULLY SUPPORT EFFORTS TO ENSURE PROPER NOTICE OF SHIPMENTS ENTERING THE UNITED STATES. WE SIMILARLY FULLY SUPPORT REGULATORY MEASURES DESIGNED TO PROTECT THE INTEGRITY OF SHIPMENTS INTO THE UNITED STATES. WE VERY MUCH APPRECIATE THIS OPPORTUNITY TO FORWARD COMMENTS WHICH MAY HELP TO DELINEATE THE "SPECIAL NATURE" OF LIVE LOBSTER AND SEAFOOD SHIPMENTS. GIVEN THE HIGHLY PERISHABLE NATURE OF OUR SHIPMENTS, WE HOPE THAT REGULATORY MEASURES COULD BE DEFINED AND INTERPRETED IN SUCH A FASHION AS TO FACILITATE THE RAPID FLOW OF PRODUCTS TO AMERICAN MARKETS AND BEYOND. THESE SHIPMENTS ARE OF HIGH COST AND REFLECT SUBSTANTIAL VALUE. WE OWE IT TO OUR AMERICAN AND INTERNATIONAL CUSTOMERS TO ADVANCE THE SPECIAL CASE OF PERISHABLES WITH THE HOPE THAT THESE SPECIAL NEEDS CAN BE REFLECTED WITHIN THE REGULATORY REGIME.

PRIOR NOTICE DOCKET NUMBER 02N-0278

WE WOULD ASK THAT THE FOLLOWING AREAS BE RECONSIDERED:

SECTION 307, PROPOSED SEC. 1.286 - WHEN TO SUBMIT A PRIOR NOTICE?

WE UNDERSTAND THE RATIONALE BEHIND PRIOR NOTICE REQUIREMENTS UNDER THE ACT. HOWEVER WE WOULD REQUEST THAT THIS PROVISION BE SOMEWHAT ALTERED TO REFLECT THE PARTICULAR NATURE OF AIR FREIGHT SHIPMENTS. WE WOULD RECOMMEND A MUCH SHORTER TIME FRAME FOR NOTICE OF AIR FREIGHT SHIPMENTS, PERHAPS FOUR HOURS. WE PROPOSE THIS BECAUSE AIR FREIGHT CONFIRMATIONS, FLIGHT DETAILS, WEATHER AND MECHANICAL ISSUES ALL ARISE IN THE AIR FREIGHT SECTOR. IF WE PROVIDE NOTICE FOUR HOURS PRIOR IT WILL BE MUCH MORE ACCURATE AND TIMELY. AS SHIPPERS WE WOULD BE PROVIDING A MUCH MORE PRECISE FORM OF NOTICE AND THEREFORE MORE BENEFICIAL TO THE REGULATORY AGENCY. WE WOULD ALSO PROPOSE THAT THIS TIME FRAME WOULD ELIMINATE THE NEED FOR "UPDATES" AS PROPOSED UNDER THE REGULATIONS.

WE WOULD ALSO REQUEST IN CONJUNCTION WITH THE ABOVE RECOMMENDATION AN ADDITIONAL CATEGORY OF "SHIPPER'S AGENT" BE AUTHORIZED TO FILE PRIOR NOTICE. SAID AGENT SHOULD BE REQUIRED TO BE REGISTERED AND LOCATED WITHIN THE UNITED STATES OF AMERICA BUT NOT NECESSARILY AT THE POINT OF ENTRY. SUCH AN AGENT COULD ALSO BE LOCATED AT THE "FINAL DESTINATION" AND THEREBY ASSIST THE IMPORTER OF RECORD. ALLOWING SUCH AN AGENT TO FILE NOTICE WOULD REDUCE THE ADMINISTRATIVE BURDEN UPON AMERICAN IMPORTERS AND WOULD FACILITATE RELIABLE NOTICE FROM THE SHIPPER.

PROPOSED SEC. 1.276 SECTION 801 (M) (1) IN BOND SHIPMENTS

AS WORLDWIDE SHIPPERS OF LIVE LOBSTER AND SEAFOOD PRODUCTS, WE FREQUENTLY TRANSPORT SHIPMENTS INTO THE UNITED STATES IN BOND TO CONNECT TO FLIGHTS AT LOGAN, JFK OR NEWARK AIRPORTS FOR RESHIPMENT WORLDWIDE. SUCH SHIPMENTS FROM MAJOR AIRPORTS ALLOW US TO REACH EUROPEAN AND ASIAN DESTINATIONS IN A TIMELY FASHION. WE HAVE ALSO ESTABLISHED CLOSE RAPPORT WITH MAJOR AMERICAN AIRLINES WHOSE CARGO DIVISIONS VERY MUCH APPRECIATE THE ADDITIONAL LOAD FACTOR REPRESENTED BY THESE GOODS. HOWEVER, UNDER THE PROPOSED REGULATION ALL IN BOND TRANSSHIPMENTS WOULD REQUIRE COMPLIANCE WITH THE PRIOR NOTICE REQUIREMENTS. THIS WOULD BE PROBLEMATIC BECAUSE THERE IS NO ACTUAL U.S. IMPORTER OR AGENT. THE GOODS ARE DESIGNATED FOR REEXPORT. GIVEN THIS ANOMALY, COULD PRIOR NOTICE IN THIS INSTANCE BE SUBMITTED BY THE EXPORTER? INDEED WE WOULD REQUEST THAT AN EXEMPTION BE OFFERED WITHIN THIS CATEGORY SO LONG AS GOODS ARE NOT TRANSITING WITHIN THE UNITED STATES FOR LONGER THAN 24 HOURS. WE WOULD PROPOSE, HOWEVER THAT TO QUALIFY FOR THIS EXEMPTION THE SHIPPER OR EXPORTER MUST BE REGISTERED WITH THE FDA, MUST BE C-TPAT (CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM) APPROVED AND MUST BE A CANADIAN FOOD INSPECTION AGENCY REGISTERED PLANT. AS SUCH, IT WOULD NECESSARILY BE A "QMP" APPROVED FACILITY WHICH IS THE CANADIAN HAACP EQUIVALENT.

THE STATUTORY DEADLINE: DECEMBER 12, 2003

AS ESTABLISHED SHIPPERS OF PERISHABLES, WE ARE VERY CONCERNED BY THE PROPOSED IMPLEMENTATION DATE OF 12 DECMEBER 2003. WE WOULD RECOMMEND THAT FOR ALL PERISHABLES THIS IMPLEMETATION DATE BE DELAYED UNTIL AFTER DECEMBER 31, 2003 RECOGNIZING THE TREMENDOUS VOLUME OF PERISHABLES MOVING THROUGH THE SYSTEM DURING THE CHRISTMAS AND NEW YEAR'S PERIOD. WE ASSUME THAT AS WITH ANY NEW REGULATORY REGIME THERE WILL BE OCCASIONAL "GLITCHES" DURING THE INTRODUCTORY PERIOD AND IT COULD BE EXTREMELY PROBLEMATIC IF THIS SHOULD ARISE DURING THE LATE DECEMBER SEASONAL RUSH. HOWEVER WE RECOGNIZE THAT ALL PRELIMIARY MEASURES SHOULD BE UNDERTAKEN PRIOR TO DECEMBER 12 '2003 SHORT OF IMPLEMENTING THE REGIME; NAMELY THAT EXPORTERS OR SHIPPERS MUST MEET ALL THE CRITERIA THAT IS SET FORTH FOR FACILITY REGISTRATION UNDER THE BIOTERRORISM ACT; ALSO SUCH FIRMS SHOULD BE C-TPAT APPROVED.

THANK YOU,

SIGNED :	RICK MURPHY	CLASSIC SEAFOOD OYSTER POND, NOVA SCOTIA	902.889-2548
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